IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

OP.No. 9254 of 2002(B)

PETITIONER:

ABDUL RAZAK,KODUR HOUSE,KODUVALLY P.O.
KOZHIKODE DISTRICT

BY ADV. SRI.ANTONY DOMINIC
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

RESPONDENTS:
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1. UNION OF INDIA,REPRESENTED BY THE SECRETARY,MINISTRY OF FINANCE(DEPARTMENT OF REVENUE)GOVERNMENT OF INDIA) NEW DELHI - 110 001

2. THE COMMISSIONER OF CUSTOMS (APPEALS), C.R.BUILDINGS,I.S.PRESS ROAD,COCHIN 682 018

3. THE ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE,COCHIN-3

BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.JOHN VARGHESE, ASSISTANT SG
SRI.S.R.AJITH, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.9254/2002

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1: TRUE COPY OF THE ORDER DATED 31-3-98 OF THE 3RD RESPONDENT

EXHIBIT.P2: TRUE COPY OF THE ORDER DATED 14-8-2000 OF THE 2ND RESPONDENT

EXHIBIT.P3: TRUE COPY OF THE REVISION APPLICATION BEFORE THE 1ST RESPONDENT BY THE PETITIONER

EXHIBIT.P4: TRUE COPY OF THE ORDER DATED 14-8-2000 OF THE 1ST RESPONDENT

(TRUE COPY)

P.A. TO JUDGE

S.SIRI JAGAN, J.

O.P. No.9254 OF 2002

Dated this the 18th day of January, 2007

JUDGMENT

A person from whom 8043.33 gms of gold valued at Rs.34,74,150/- which were ingeniously concealed in Emergency Light, Mixi, Grinder, Dry cell Batteries, Car horn etc., have been seized by the Customs Authorities while he exited through the green channel at the Karipur Airport is the petitioner herein. He has approached this Court challenging Ext.P4 order, by which, the revisional authority under the Customs Act, namely, the Government of India, has denied him the benefit of option to pay fine in lieu confiscation of the gold in question under Section 125 of the Act. The petitioner now does not challenge the adjudication proceedings under the Customs Act or the order of confiscation of the gold in such adjudication proceedings. The petitioner contends that Section 125 of the Customs Act for option to pay fine in lieu of confiscation. The contention of the petitioner is that Section 125 of the Customs Act, 1962 consists of two parts. The first is in respect of importation

of goods which is prohibited under law. The second is other goods. The counsel for the petitioner would contend that while it is in the discretion of the adjudicating authority, in respect of prohibited goods to permit to redeem the confiscated goods by paying fine in lieu thereof, there is no such discretion vested with the adjudicating authority in the case of other goods and option is on the person from whom the goods are seized or owner of the goods to redeem the goods by paying fine or not. The counsel would submit that the gold not being a prohibited item of goods for importation into India, the first part of the Section 125 will not apply and therefore once the petitioner exercise his option to pay fine in lieu of confiscation, the adjudicating authority have no option but to permit the petitioner to redeem the gold by paying fine in lieu of confiscation. No doubt, apart from the fine, the petitioner would also be liable to pay duty on the goods also as per the customs tariff. Of course, in order to prove that goods are not prohibited goods, petitioner refers to the provisions of the (Foreign Trade (Development and Regulation) Act, 1992) and Foreign Trade (Exemption from application of rules in certain cases) Order, 1993.

2. The respondents have filed a counter affidavit, in which, they support the impugned order. According to them,the petitioner was intercepted at the exit gate of the baggage hall of Karipur Airport by the Customs Officers. He exited through the green channel by declaring that he had no dutiable goods in possession for declaration. On detailed examination of his purse and baggages, 69 gold biscuits of 10 tholas each totally weighing 8043.33 gms valued at Rs.34,74,150/- was recovered. These gold biscuits were ingeniously concealed in emergency light, mixi, grinder, dry cell batteries, car horn etc. In the statement given under Section 108 of the Customs Act, 1962, the petitioner deposed that the gold biscuits do not belong to him and the same was entrusted by one Kammal Mohammed for handing over one Sri.M.P. Majeed at his native place. For transportation of gold, the petitioner was offered a remuneration of Rs.75,000/- by Shri. Kammal Mohammed. Accordingly, the petitioner agreed to be a carrier of the gold into India. It is under the said circumstances that gold was seized and later confiscated as per the adjudication order. The appeal filed by the petitioner before the Commissioner (Appeals) ended in confirmation of the adjudication order although the penalty was reduced from Rs. 25,000/- to

Rs.5,000/-. But the claim of the petitioner for paying fine in lieu of confiscation was rejected by the Commissioner (Appeals). On revision by the impugned order, the Government of India also rejected the claim of the petitioner. On the basis of these facts, the respondents would submit that the petitioner is not entitled to redeem the confiscated goods by paying fine in lieu of confiscation. They would particularly give stress to the fact that gold biscuits were smuggled into India ingeniously concealed. They would also heavily rely on the fact that in the statement given under Section 108 of the Customs Act, the petitioner had disclaimed ownership of the gold. It is also pointed out that in the adjudication proceedings which is not now challenged before this court, it was found that the petitioner had brought gold as a carrier for delivery to one Sri. M.P. Majeed, on whom also penalty was imposed. They therefore pray for dismissal of the writ petition.

3. I have considered the rival contentions in detail.

4. I am of opinion that I need not elaborate on the question as to whether the gold biscuits seized from the petitioner were prohibited

goods or not because the respondents themselves admit that they are not prohibited goods. Now, the only question is whether the petitioner is entitled to, as of right, redeem the gold by paying fine in lieu of confiscation. Going by Section 125 of the Customs Act, 1992, the discretion on the adjudicating officer to allow option to pay fine in lieu of confiscation is only in the case of prohibited goods. In the case of other goods, the owner of the goods or whether such owner is not known, the person from whom the possession or custody of such goods have been seized has an option to pay such fine in lieu of confiscation, as the adjudicating officer thinks fit, as of right. In that view, perhaps, the petitioner may be entitled to exercise his option.

5. But I am not inclined to exercise my discretionary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner for several reasons. Firstly, the petitioner brought gold into India by concealing the same ingeniously as described above. He exited through the green channel declaring that he had no dutiable goods in possession for declaring. It was only when the customs officers intercepted him at the exit gate that those goods

were found to have been in his possession.

6. Admittedly, in the statement originally given under Section 108 of the Customs Act, 1962, the petitioner disclaimed ownership of the same and admitted that he was only a carrier . Thereafter, he retracted the said statement but in the adjudication proceedings, the finding is that the petitioner is not the owner of the gold at all, but he was in fact only a carrier of the same on behalf of Sri. M.P. Majeed. These findings are no longer under challenge in this Writ Petition. The said Majeed has not come forward to claim the gold. When the petitioner does not challenge the findings of the adjudicating authorities and the appellate authorities that the gold does not belong to him, I am afraid that his claim for option to pay fine in lieu of confiscation and to redeem the gold cannot be entertained. In any event, the very purpose of the Customs Act is to prevent smuggling. From the facts revealed which has been found to be true by the adjudicating authorities and not challenged by the petitioner, it is clear that the petitioner was in fact abetting smuggling which would adversely affect the economy of the country itself. Such acts should not be encouraged by permitting such unscrupulous persons to

redeem such gold confiscated by paying fine in lieu thereof. For all these reasons, I am not inclined to exercise my discretionary jurisdiction in favour of the petitioner and accordingly the writ petition is dismissed.

(S.SIRI JAGAN, JUDGE)

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